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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ERIC J. WILLIAMS,
Petitioner,

v.

DOMINGO URIBE, Warden,
Respondent.

Case No. CV 17-02016-JLS (KES)

ORDER SUMMARILY DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS FOR LACK OF SUBJECT
MATTER JURISDICTION

On March 14, 2017, Eric J. Williams (“Petitioner”) filed a Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254 (“Petition”). (Dkt. 1.) The Petition is the second habeas petition that Petitioner has filed challenging his 2009 convictions for second degree robbery and conspiracy to commit robbery in the Superior Court for Los Angeles County, case no. NA076870. (Petition at 3.¹)

Under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, a habeas petition filed by a prisoner in state custody “must” be summarily dismissed “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court[.]” For the

¹ All page citations refer to the CM/ECF pagination.

1 reasons set forth below, the Petition must be dismissed without prejudice as a second
2 or successive petition pursuant to 28 U.S.C. § 2244(b).

3 **I.**

4 **PROCEDURAL HISTORY**

5 In August 2012, Petitioner filed a habeas petition under 28 U.S.C. § 2254 in
6 this Court, case no. CV-12-06818-JLS-AN.² The Court found as follows:

7 On December 2, 2009, Eric Jerome Williams (“Petitioner”) was
8 convicted of two counts of second degree robbery (CAL. PENAL
9 CODE § 211) and one count of conspiracy to commit robbery (CAL.
10 PENAL CODE § 182(a)(1)) following a jury trial in the California
11 Superior Court for Los Angeles County (case no. NA076870). The jury
12 also found true allegations that, in the commission of both robberies,
13 Petitioner personally used a handgun (CAL. PENAL CODE
14 § 12022.53(b)), and that in the commission of one of the robberies
15 Petitioner also personally and intentionally discharged a handgun
16 (CAL. PENAL CODE § 12022.53(c)). Petitioner was acquitted of two
17 counts of attempted murder and one count each of attempted robbery
18 and robbery.

19 In a bifurcated proceeding, the jury found true allegations that
20 the robberies were committed for the benefit of, at the direction of, or
21 in association with a criminal street gang, with the specific intent to
22 further, promote, or assist in criminal conduct by gang members (CAL.
23 PENAL CODE § 186.22(b)(1)). Petitioner was sentenced to a term of
24 35 years in state prison.

25 Petitioner appealed the judgment of conviction to the California
26

27 ² The Court takes judicial notice of its own records. Fed. R. Evid. 201(b)(2);
28 United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980).

1 Court of Appeal, raising the first two claims he raises in the pending
2 Petition. On February 17, 2011, in an unpublished opinion, the state
3 court of appeal affirmed the judgment of conviction and rejected
4 Petitioner's claims on the merits (case no. B221139).

5 The California Supreme Court denied review of the court of
6 appeal's decision without comment or citation (case no. S191822).

7 Petitioner subsequently ... [filed] a habeas petition filed with the
8 California Supreme Court, which was denied without comment or
9 citation (case no. S201966).

10 Williams v. Bitter, Case No. CV-12-06818-JLS-AN, Dkt. 19 at 1-2 (report and
11 recommendation) (internal citations to the record omitted).

12 Like the present Petition, the August 2012 petition challenged Petitioner's
13 2009 convictions for second degree robbery and conspiracy to commit robbery,
14 arguing: (1) that the trial court abused its discretion by admitting gang evidence in a
15 bifurcated trial; (2) that the trial court deprived him of his Sixth Amendment
16 Confrontation Clause rights; (3) that the prosecution failed to disclose evidence
17 favorable to the defense in violation of Brady v. Maryland, 373 U.S. 83 (1963);
18 (4) that he received ineffective assistance of counsel on direct appeal because his
19 counsel failed to raise the Brady claim; (5) that the trial court improperly sentenced
20 him under California Penal Code § 12022.53(c). Williams, Case No. CV-12-06818-
21 JLS-AN, Dkt. 19. This Court denied the petition on September 11, 2013. Id., Dkt.
22 22 (order adopting report and recommendation).

23 The instant Petition raises at least four claims for relief: (1) Petitioner is
24 actually innocent and there was insufficient evidence to sustain the convictions
25 (Petition at 2, 6); (2) Petitioner was "subjected to prosecutorial misconduct, abuse of
26 process, unlawful attachment and vindictive prosecution" (Id. at 2); (3) Petitioner's
27 sentence violated due process (Id.); and (4) Petitioner was deprived of a fair trial
28 when the trial court allowed the prosecution to present gang evidence to the jury

1 instead of in a bifurcated trial (Id. at 41).

2 II.

3 DISCUSSION

4 If a successive habeas petition under 28 U.S.C. § 2254 raises a claim that was
5 already presented in a prior habeas petition, then that claim must be dismissed. See
6 28 U.S.C. § 2244(b)(1). If a successive habeas petition under § 2254 raises a claim
7 that was *not* raised in the prior habeas petition or petitions, then that claim must be
8 dismissed unless:

9 (A) the applicant shows that the claim relies on a new rule of
10 constitutional law, made retroactive to cases on collateral review by the
11 Supreme Court, that was previously unavailable; or

12 (B)(i) the factual predicate for the claim could not have been discovered
13 previously through the exercise of due diligence; and

14 (ii) the facts underlying the claim, if proven and viewed in light of the
15 evidence as a whole, would be sufficient to establish by clear and
16 convincing evidence that, but for constitutional error, no reasonable
17 factfinder would have found the applicant guilty of the underlying
18 offense.

19 28 U.S.C. § 2244(b)(2). If the petitioner can show that claims raised in a successive
20 habeas petition are proper under one of these provisions, then the petitioner must seek
21 permission in the Ninth Circuit Court of Appeals before filing a successive petition
22 in this Court:

23 Before a second or successive application permitted by this section is
24 filed in the district court, the applicant shall move in the appropriate
25 court of appeals for an order authorizing the district court to consider
26 the application.

27 28 U.S.C. § 2244(b)(3)(A) (emphasis added).

28 The Petition now pending constitutes a second and/or successive petition

1 challenging the same convictions as Petitioner's prior federal habeas petition within
2 the meaning of 28 U.S.C. § 2244(b). Thus, it was incumbent on Petitioner under
3 § 2244(b)(3)(A) to secure an order from the Ninth Circuit authorizing the District
4 Court to consider his new claims prior to filing the instant Petition. Petitioner's
5 failure to secure an order from the Ninth Circuit deprives this Court of subject matter
6 jurisdiction. Cooper v. Calderon, 274 F.3d 1270, 1274 (9th Cir. 2001), cert. denied,
7 538 U.S. 984 (2003).

8 IT IS THEREFORE ORDERED that this action be summarily dismissed
9 without prejudice pursuant to Rule 4 of the Rules Governing Section 2254 Cases in
10 the United States District Courts.

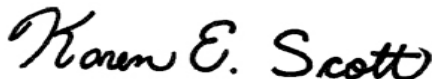
11 LET JUDGMENT BE ENTERED ACCORDINGLY.

12
13 DATED: April 27, 2017



14
15 JOSEPHINE L. STATON
16 UNITED STATES DISTRICT JUDGE

17 Presented by:



18
19 KAREN E. SCOTT
20 United States Magistrate Judge